

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

CASE NO. 02-05056-3P7

NICHOLAS M. KALYNYCH,

Debtor.

FILED
JACKSONVILLE, FLORIDA

OCT 17 2002

CLERK, U. S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

This case is before the Court upon the Trustee's objection to the Debtor's claim of exemption regarding Debtor's former marital home. The Court conducted a hearing on September 4, 2002. Upon the evidence presented, the Court makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. Debtor was divorced by Final Judgment on October 24, 2000.
2. Debtor's former wife was awarded the exclusive title, use and possession of Debtor's former home, which has homestead status.
3. The judgment required Debtor's former wife to pay Debtor \$15,000 upon refinancing the home mortgage, within 4 years of the judgment, or sooner if mortgage rates reached 7% or less. Debtor's former wife has not yet paid Debtor the \$15,000.
4. Debtor's former wife continues to live in the home with Debtor's two minor children, for whom the Debtor is paying child support.
5. Debtor does not own the home where he currently lives, but testified he intends to buy a one half interest in his fiancée's home.

Trustee next argues that, even if the Court considers the 15,000 to be proceeds from the sale of homestead property, Debtor is not entitled to a homestead exemption because he has not shown a good faith intention to reinvest in a substitute homestead. Specifically, the Trustee alleges that Debtor has not invested in a substitute homestead in a reasonable time because two years have passed since Debtor's divorce.

To receive an exemption, a debtor must show a good faith intention, both prior to and at the time of the sale, to reinvest the proceeds in another homestead. In re Orange Brevard Plumbing & Heating Co. v. La Croix, 137 So. 2d 201, 207(Fla. 1962). The proceeds: (1) must be reinvested within a reasonable time, (2) cannot be co-mingled with the debtor's other money and (3) must be held for the sole purpose of acquiring another homestead. Id. at 206.

The parties only dispute whether two years is a reasonable time within which to reinvest the proceeds in another homestead. This Court notes that the question of whether funds received from the sale of a homestead are invested in another homestead within a reasonable time is determined by the facts and circumstances of each case. Id. at 207.

This Court finds that, given the facts of this case, Debtor has sufficiently demonstrated his intention to substitute his homestead with the proceeds in question and that two years qualifies as a reasonable time to do so.

Conclusion

This Court finds that based upon the holdings in Harrison and Orange Brevard

the \$15,000 is exempt as proceeds from the sale of the homestead. The Court will enter a separate Order Denying Trustee's Objection to Debtor's Exemption.

DATED this 17 day of October, 2002 at Jacksonville, Florida.



GEORGE L. PROCTOR
United States Bankruptcy Judge

Copies Furnished To:

Debtor
Gregory K. Crews
Edward P. Jackson
United States Trustee

D.F. 10-17-02